

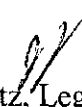
AGENDA ITEMS #12 & 13
July 29, 2008

Action

MEMORANDUM

July 25, 2008

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: Action - Zoning Text Amendment 08-08,
Fenton Village Overlay Zone - Workforce Housing Height
and
Zoning Text Amendment 08-10,
Fenton Village Overlay Zone - Hotel Heights

PHED Committee Recommendation: The Planning, Housing, and Economic Development Committee is meeting on July 28, 2008. Its recommendation will be forwarded to the Council when it is available. *The following is the memorandum that went to the Committee on July 25, 2008.*

Zoning Text Amendment (ZTA) 08-08, sponsored by the District Council at the request of the County Executive, was introduced on April 29, 2008. Currently, Central Business District (CBD) zones allow building height limits recommended by the applicable sector plan to be exceeded to accommodate workforce housing. The Fenton Village Overlay zone was adopted on top of CBD zones. The Overlay Zone does not have a provision to exceed the sector plan-recommended height limits. ZTA 08-08, as introduced, would allow additional building height, up to the height limits of the underlying zone, for workforce housing in the Fenton Village Overlay Zone.

Zoning Text Amendment (ZTA) 08-10, sponsored by Councilmembers Ervin and Elrich, was introduced on May 6, 2008. ZTA 08-10 would amend the Zoning Ordinance to allow additional building height to accommodate a hotel in a mixed-use optional method of development project on the east side of Fenton Street in the Fenton Village Overlay Zone. Currently, the Fenton Village Overlay Zone limits building heights on the east side of Fenton Street to 45 feet except for multi-family buildings, which may be 60 feet tall. ZTA 08-10 would

allow a maximum building height of 60 feet for a mixed-use optional method of development project that includes a hotel on the east side of Fenton Street.

The Committee's first worksession on these ZTAs was held on June 26, 2008. The Committee did not reach any conclusions at that time. There was a general discussion by the Committee concerning delaying action on the ZTA and pursuing a sector plan amendment first. There was also a discussion about limiting the flexibility that would be allowed by the ZTAs as introduced. Staff has drafted two alternatives for the Committee's consideration. The first alternative is specific on the area where the additional height for workforce housing would be allowed. It would amend ZTA 08-08 as follows:

- 1) For an area 150 feet from Georgia Avenue, but no closer to Fenton Street than 290 feet, allow residential projects additional building height necessary to accommodate workforce housing but no higher than 110 feet;
- 2) East of Fenton Street, allow mixed-use optional method of development projects that include both residential and hotel uses with a maximum building height of 60 feet;
- 3) Require at least 33 percent of the **floor area** of a project to be used for residential purposes to be considered for additional height;
- 4) Grandfather approved project plans and site plans; and
- 5) Replace the street names in the Overlay zone with more generic descriptions:
Georgia Avenue = major highway
East side of Fenton Street = a street abutting a block that includes one-family zoning
West side of Fenton Street = a street confronting a block that includes one-family zoning.

The second alternative would only change item #1 above. It would have the effect of giving more discretion to the Planning Board on tapering down from the tallest buildings allowed near Georgia Avenue. Alternative #2 would amend Alternative #1 as follows:

- A) Allow a maximum height of 90 feet **along** Georgia Avenue,
- B) Allow 110 foot building height **near** Georgia Avenues to accommodate workforce housing, and
- C) Require building heights to taper down at the Planning Board's discretion, from the highest buildings near Georgia Avenue to the maximum 60 foot heights allowed along Fenton Street.

Councilmembers Ervin and Elrich would recommend proceeding with a sector plan amendment for a portion of the Fenton Village Overlay zone south of Bonifant Street and suspending any action on ZTA 08-10. If the Committee does not reach an agreement on ZTA 08-08 as amended, an amended ZTA 08-10 is provided for the Committee's consideration.

The staff memorandum for the June 26 worksession is attached to this memorandum.
The opinions and issues are still relevant to the amended ZTA.

<u>This packet contains:</u>	<u>© number</u>
ZTA 08-08 – Alternative #1	1 - 4
ZTA 08-08 – Alternative #2	5 - 8
Planning Board Recommendation	9 - 10
Planning Staff Recommendation	11 - 17
ZTA 08-10 – amended	18 - 21
Planning Board recommendation	22 - 23
Planning Staff recommendation	24 - 29
Memorandum for the June 26 PHED Meeting	30 - 37

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Ordinance No.:
Zoning Text Amendment No.: 08-08
Concerning: Fenton Village Overlay Zone –
Workforce Housing Height
Draft No. & Date: 2 - 7/25/08
Introduced: April 29, 2008
Public Hearing: June 10, 2008
Adopted:
Effective:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: The District Council at the request of the County Executive

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow additional building height for mixed-use, optional method of development projects with a hotel in the Fenton Village Overlay Zone;
- allow optional method of development projects in the Fenton Village Overlay Zone additional building height to accommodate workforce housing units; and
- generally amend building height limits in the Fenton Village Overlay Zone.

By amending the following sections of the Montgomery County Zoning Ordinance:

Division 59-C-18 **OVERLAY ZONES**
Section 59-C-18.192 Fenton Village Overlay Zone - Regulations

<p>EXPLANATION: Boldface indicates a heading or a defined term. <u>Underlining</u> indicates text that is added to existing laws by the original text amendment. [Single boldface brackets] indicate text that is deleted from existing law by the original text amendment. <u>Double underlining</u> indicates text that is added to the text amendment by amendment. [[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment. * * * indicates existing law unaffected by the text amendment.</p>
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Section 1. Division 59-C-18 is amended as follows:

59-C-18. OVERLAY ZONES.

* * *

59-C-18.19. Fenton Village Overlay Zone.

* * *

59-C-18.192. Regulations.

* * *

(1) Building height in the Overlay Zone:

(A) along [[the east side of Georgia Avenue]] a major highway must not exceed 90 feet;

(B) along [[the west side of Fenton Street]] any street confronting any block that includes property zoned in any one-family residential classification, must not exceed 60 feet;

(C) within the area [[between Georgia Avenue and Fenton Street]] within 290 feet of a street that confronts a block that includes property zoned in any one-family residential classification, must not exceed 60 feet but may increase up to 90 feet the maximum height allowed [[for projects that are]] if at least 33% of a project's floor area is residential;

(D) within the area at least 150 feet from a major highway and at least 290 feet from a street that confronts a block that includes property zoned in any one-family residential classification, up to 110 feet if the additional height:

- (i) is the minimum necessary to allow to accommodate workforce housing units required by Chapter 25B; and
- (ii) at least 33% of the project's floor area is residential.
- and where the additional height is placed closest to [[Georgia Avenue]] the major highway and decreases [[as you move east to Fenton Street]] in the direction of the closest property zoned in any one-family residential classification; [and]
- [[B)] (E) [[along the east side of Fenton Street]] property located in a block that includes property zoned in any one-family residential classification must not exceed 45 feet for all uses except [[housing, which must not exceed 60 feet[.]; and]] the building height must not exceed 60 feet for:
- (i) residential use: or
- (ii) mixed use optional method project, if at least 33% of the project's floor area is residential and the projects includes a hotel.
- (F) The building heights in project plans may be approved under the standards of this subsection without regard to the building height recommendations of the sector plan.
- (G) Any project plan approved before {effective date} may be constructed under the conditions of its approval and any site plan thereafter. Any site plan approved before the {effective date } may be constructed under the conditions of its approval. Any building constructed under this subsection is conforming and may be maintained and reconstructed under the conditions of their approval.
- [[C) between Georgia Avenue and Fenton Street, any optional method of development project may be approved up to the maximum height limit

54 in the underlying zone for the construction of workforce housing units
55 as defined in Chapter 25B if the additional height is the minimum
56 necessary to allow for the construction of workforce housing units.
57 The additional building height for workforce housing units may be
58 approved notwithstanding any limits recommended in a sector plan;
59 however, the building height along the west side of Fenton Street
60 must not exceed 60 feet.]]

61 * * *

62 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
63 date of Council adoption.

64
65
66 This is a correct copy of Council action.

67
68
69
70
71 _____
72 Linda M. Lauer, Clerk of the Council
73

Ordinance No.:
Zoning Text Amendment No.: 08-08
Concerning: Fenton Village Overlay Zone –
Workforce Housing Height
Draft No. & Date: 3 - 7/25/08
Introduced: April 29, 2008
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1 **Section 1. Division 59-C-18 is amended as follows:**

3 **59-C-18. OVERLAY ZONES.**

4 * * *

5 59-C-18.19. Fenton Village Overlay Zone.

6 * * *

7 59-C-18.192. Regulations.

8 * * *

9 (1) Building height in the Overlay Zone:

11 (A) along [[the east side of Georgia Avenue]] a major highway must not
12 exceed 90 feet;

13 (B) along [[the west side of Fenton Street]] any street confronting any
14 block that includes property zoned in any one-family residential
15 classification, must not exceed 60 feet;

16 (C) within the area between [[Georgia Avenue and Fenton Street]] a major
17 highway and a street that confronts a block that includes property
18 zoned in any one-family residential classification, must not exceed 60
19 feet but may increase up to 90 feet the maximum height allowed [[for
20 projects that are]] if at least 33% of a project's floor area is
21 residential; however, if additional building height is necessary to
22 allow to accommodate workforce housing units required by Chapter
23 25B and at least 33% of the project's floor area is residential, up to
24 110 feet and where the additional height is placed [[closest to Georgia
25 Avenue]] near a major highway and decreases [[as you move east to
26 Fenton Street]] in the direction of the closest property zoned in any
27 one-family residential classification; [and]

28 ~~[[B)]]~~ (D) [[along the east side of Fenton Street]] property located in a
29 block that includes property zoned in any one-family residential
30 classification must not exceed 45 feet for all uses except [[housing,
31 which must not exceed 60 feet[.]; and]] the building height must not
32 exceed 60 feet for:

33 (i) residential use; or

34 (ii) mixed use optional method project, if at least 33% of the
35 project's floor area is residential and the projects includes a
36 hotel.

37 (E) The building heights in project plans may be approved under the
38 standards of this subsection without regard to the building height
39 recommendations of the sector plan.

40 (F) Any project plan approved before {effective date} may be constructed
41 under the conditions of its approval and any site plan thereafter. Any
42 site plan approved before the {effective date } may be constructed
43 under the conditions of its approval. Any building constructed under
44 this subsection is conforming and may be maintained and
45 reconstructed under the conditions of their approval.

46 ~~[[C)]~~ between Georgia Avenue and Fenton Street, any optional method of
47 development project may be approved up to the maximum height limit
48 in the underlying zone for the construction of workforce housing units
49 as defined in Chapter 25B if the additional height is the minimum
50 necessary to allow for the construction of workforce housing units.
51 The additional building height for workforce housing units may be
52 approved notwithstanding any limits recommended in a sector plan;
53 however, the building height along the west side of Fenton Street
54 must not exceed 60 feet.]]

* * *

Sec. 2. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

June 10, 2008

TO: The County Council for Montgomery County, Maryland, sitting as the
District Council for the Maryland-Washington Regional District in
Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 08-08

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 08-08 at its regular meeting on June 5, 2008. By a vote of 3:0, the Board recommends that the text amendment not be approved. The text amendment proposes to amend the Zoning Ordinance to allow optional method of development projects in the Fenton Village Overlay Zone additional building height up to the maximum height of the underlying zone to accommodate workforce housing between Georgia Avenue and Fenton Street. The underlying zone allows 90' under the optional method of development and up to 143' with approval of the Planning Board to accommodate the workforce housing requirement. Building height at 143' would create a rather abrupt transition from 143' to 60' at the west side of Fenton Street.

Height limitations were recommended in the sector plan in order to ensure compatibility of new development in Fenton Village with the adjacent neighborhood and to sustain Fenton Village as a transitional area between the Core and the surrounding one-family residences. The sector plan intended for Fenton Village to maintain the scale of a village, not the scale of the adjacent CBD core that allows building heights from 143' to 200'.

Zoning Text Amendment 08-08 as introduced is contrary to the recommendations of the approved and adopted sector plan and height limits of the Fenton Village Overlay

Zone. The Board believes that consideration of the Fenton Village development envelope and the design implications of increasing building height above sector plan limits to accommodate workforce housing are better served by amendment to the sector plan, than by amendment to the zoning ordinance. Changing important sector plan recommendations by Zoning Text Amendment should be discouraged.

If the Council is inclined to approve ZTA 08-08, the Board recommends that the maximum building height increase to accommodate workforce housing between Georgia Avenue and Fenton Street not exceed 20 feet above the sector plan established limit of 90'.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on a motion by Vice-Chairman Robinson, seconded by Commissioner Cryor, with Commissioner Cryor, Vice-Chairman Robinson and Chairman Hanson voting in favor of the motion to not approve the text amendment, and with Commissioner Bryant being absent from the meeting, at its regular meeting held in Silver Spring, Maryland, on Thursday, June 5, 2008.


Royce Hanson
Chairman

RH: GR



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item # 7
6/05/08

DATE: May 22, 2008
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review
Ralph Wilson, Zoning Supervisor
FROM: Greg Russ, Zoning Coordinator
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To amend the Zoning Ordinance to allow optional method of development projects in the Fenton Village Overlay Zone additional building height to accommodate workforce housing units.

TEXT AMENDMENT: No. 08-08
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: The District Council at the request of the County Executive
INTRODUCED DATE: April 29, 2008
PLANNING BOARD REVIEW: June 5, 2008
PUBLIC HEARING: June 17, 2008; 1:30pm

STAFF RECOMMENDATION: DENIAL

Staff recommends denial of the proposed Zoning Text Amendment (ZTA) for the following reasons:

- Inconsistency with Sector Plan recommendations for Fenton Village;
- Greater building heights for Fenton Village should be considered through a sector plan amendment, not through a Zoning Text Amendment; and
- Notwithstanding the intent of the ZTA, subdivision approval would require the Planning Board to find the sector plan recommendations for a portion of Fenton Village no longer applicable.

Increasing the building heights for certain properties in Fenton Village conflicts with recommendations of the Silver Spring CBD Sector Plan and the Fenton Village Overlay Zone. Consideration of the development envelope for Fenton Village may be appropriate, but better served if done through a Sector Plan amendment. Any effort to change important sector plan recommendations by Zoning Text Amendment should be discouraged.

ANALYSIS

Zoning Text Amendment 08-08 (Attachment 1) proposes a revision to Section 59-C-18.19 (Fenton Village Overlay Zone) that would allow the approval of an optional method of development project up to the maximum height allowed in the underlying CBD-1 zone for the construction of workforce housing between Georgia Avenue and Fenton Street. Under the ZTA, the additional height would be limited to the minimum necessary to accommodate the construction of workforce housing units, and any building height along the west side of Fenton Street must not exceed 60'.

The underlying zone (CBD-1) allows a height limit of 90' under the optional method of development and up to 143' with approval of the Planning Board to accommodate workforce housing. A building height at 143' on the east side of Fenton would create an abrupt transition to the 60' allowed on the west side of Fenton Street. A 143' building height on the east of Georgia Avenue, transitioning down to 90' at mid-block, and terminating at 60' on the west side of Fenton Street could be a solution more in keeping with the Fenton Village redevelopment objectives. This is especially the case with the increase in maximum building height up to 200' on the west side of Georgia Avenue in the Ripley District. As such, raising the height limit along the east side of Georgia Avenue to 143' (as part of a Sector Plan amendment) could be appropriate if done with a requirement for street activating uses (see sketch attached to Community-Based Planning Memorandum-Attachment 2). Attachment 3 provides a graphic massing study of existing, proposed and potential development in Fenton Village. The section below provides a more detailed explanation of the massing study.

Massing Study (Attachment 3)

Two massing diagrams are included as Attachment 3 to the staff report. Both diagrams include existing, currently approved and "in planning" buildings. Potential development sites also have theoretical buildings massed to show how the blocks could be built out.

In the first diagram the height is increased to 143 feet only for those properties fronting Georgia Avenue. The other heights across the block through to Fenton Street are shown in compliance as currently regulated. The massing study shows that the floor area ratios currently allowed floor areas are insufficient to fill out the blocks at heights of 143' as well as the rest of the block. The increase in height to 143' on the east side of Georgia cannot properly be utilized to create a desirable building wall because there is not enough floor area available under the current CBD-1 zone.

The second diagram shows the same buildings stretched to a height of 143' across the entire area from Georgia to Fenton, as proposed in the ZTA. Note that

the densities are considerably over the allowable floor areas permitted under the Zoning Ordinance. To get these buildings up to that height would require floor area increases. The building bulk is also undesirable. The heights should step down as they reach Fenton Street.

Subdivision and Project Plan Review

Another issue to be considered is the basic rule that a subdivision must substantially conform to the master plan unless the Board finds that the master plan is no longer applicable still would apply to a subdivision submitted in Fenton Village. Sector plan and subdivision provisions cannot be changed by amendment of the zoning code. Notwithstanding any approval of ZTA 08-08 by the District Council, the sector plan recommended building height for the affected Fenton Village properties would be from 60' to 90' (based on location and use restrictions) and, to approve a preliminary plan with higher heights would require a finding that the sector plan recommendation is no longer applicable. It should be further noted that any optional method of development project plan must conform to the applicable sector plan.

Conformance with the Applicable Sector Plan

The Approved and Adopted Sector Plan envisioned Fenton Village as a "diverse community of people living and working to create a tightly-knit urban neighborhood conducive to strolling and browsing ... providing ... a traditional town atmosphere not found in shopping centers or malls" (Silver Spring CBD Sector Plan, 2000, pg 60). To this end, the Sector Plan envisioned maintaining and improving small-scale retail; capturing some of the Class C and Class B office space market in Montgomery County; and bringing new housing development to Fenton Village. A height incentive for housing in Fenton Village was recommended in the Sector Plan and implemented via an Overlay Zone to spur residential development and create a mixed use aspect to Fenton Village. It was expected that new housing development would improve the physical environment, activate the streets and provide resident markets for businesses within the overlay zone.

Height limitations were also recommended by the Sector Plan in order ensure the compatibility of new development in Fenton Village with the adjacent neighborhoods (East Silver Spring and north Takoma Park) and to sustain Fenton Village as a *transitional* area between the Core and the surrounding single family residences (i.e. the tent effect goal of the Sector Plan). The Sector Plan intended for Fenton Village to maintain the scale of a village, not the scale of the adjacent CBD core which allows building heights from 143' to 200'. Per the Sector Plan recommendation, the Fenton Village Overlay Zone (which implements the recommendations in the Sector Plan) limits height to 90' on the east side of Georgia Avenue and 60' on the west side of Fenton Street. For properties in between and not fronting on either Georgia or Fenton Street, the

height may go up to 90' if that project is at least 33% residential; this reflects the aforementioned height incentive that was created specifically to achieve the housing goal in the Sector Plan. Exceeding 90' may do even more to encourage housing opportunities, but it would be inconsistent with the Sector Plan vision for Fenton Village.

RECOMMENDATION

Based on the above analysis, staff recommends that ZTA 08-08 not be approved. The proposed text amendment conflicts with the recommendations of the approved and adopted Silver Spring CBD Sector Plan and the maximum building heights established in the Fenton Village Overlay Zone. Although some further consideration of the development envelope in Fenton Village may be appropriate, this is best done through a Sector Plan amendment.

GR

Attachments

1. Proposed Text Amendment No. 08-08
2. Memorandum to Greg Russ from Community-Based Planning
3. Massing Study of development potential in the Fenton Village Overlay Zone



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

May 20, 2008

MEMORANDUM

TO: Greg Russ, Planner Coordinator
Development Review Division

VIA: Glenn Kreger, Acting Chief *GK*
Community-Based Planning Division

FROM: John Marcolin, ASLA, Planner Coordinator *JM*
Community-Based Planning Division

SUBJECT: Proposed ZTA No. 08-08
Fenton Village Height Limit

RECOMMENDATION: Denial for the following reasons:

- This Zoning Text Amendment is inconsistent with the Sector Plan recommendations for Fenton Village.
- Reconsidering this vision should be done via a sector plan amendment, not through a Zoning Text Amendment.
- Leaving the existing language in the Sector Plan will make it very difficult for the Planning Board to find that project plans exceeding the existing height limits are in conformance with the Sector Plan.

Sector Plan Guidance

The Approved and Adopted Sector Plan envisioned Fenton Village as a "diverse community of people living and working to create a tightly-knit urban neighborhood conducive to strolling and browsing...providing...a traditional town atmosphere not found in shopping centers or malls" (Silver Spring CBD Sector Plan, 2000, page 60). To this end, the Sector Plan envisioned maintaining and improving small-scale retail; capturing some of the Class C and Class B office space market in Montgomery County; and bringing new housing development to Fenton Village. A height incentive for housing in Fenton Village was recommended in the Sector Plan and implemented via an Overlay Zone to spur residential development and create a mixed use aspect to Fenton Village. It was expected that new housing development would improve the physical environment, activate the streets and provide resident markets for businesses within the Overlay Zone.

Height limitations were also recommended by the Sector Plan in order ensure the compatibility of new development in Fenton Village with the adjacent neighborhoods (East Silver Spring and north Takoma Park) and to sustain Fenton Village as a *transitional* area between the Core and

the surrounding single-family residences (i.e. the tent effect goal of the Sector Plan). The Sector Plan intended for Fenton Village to maintain the scale of a village, not the scale of the adjacent CBD core which allows building heights from 143' to 200'. Per the Sector Plan recommendation, the Fenton Village Overlay Zone (which implements the recommendations in the Sector Plan) limits height to 90' on the east side of Georgia Avenue and 60' on the west side of Fenton Street. For properties in between and not fronting on either Georgia or Fenton Street, the height may go up to 90' if that project is at least 33 percent residential; this reflects the aforementioned height incentive that was created specifically to achieve the housing goal in the Sector Plan. Exceeding 90' may do even more to encourage housing opportunities, but it would be inconsistent with the Sector Plan vision for Fenton Village.

Urban Design

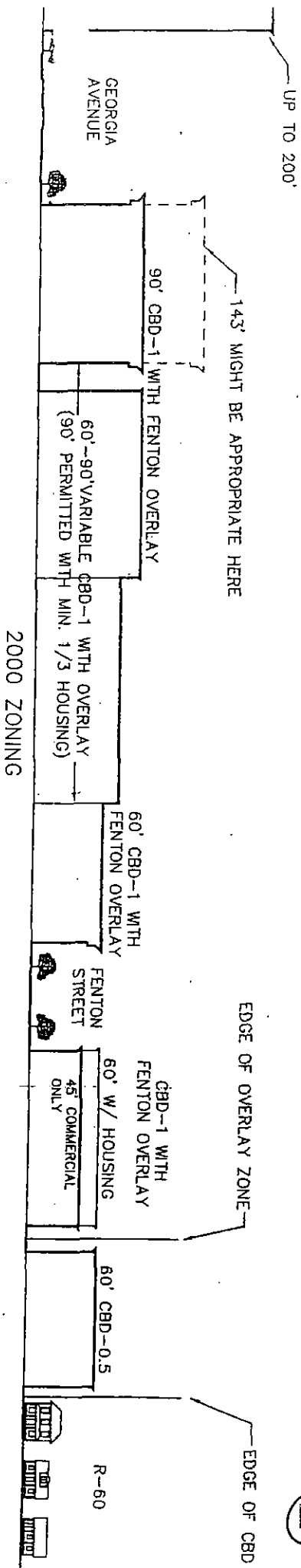
Zoning Text Amendment 08-08 proposes a revision to the Zoning Ordinance (Section 59-C-18.19. Fenton Village Overlay Zone) that would allow the approval of an optional method of development project up to the maximum height limit in the underlying zone for the construction of work force housing units between Georgia Avenue and Fenton Street. The underlying zone allows 90' heights under the optional method of development and up to 143' with approval of the Planning Board to accommodate the work force housing requirement. If the 143' height was approved, it would create a rather abrupt transition from 143' to 60' at the west side of Fenton Street. A 143' maximum building height on the east side of Georgia Avenue only, transitioning down to 90' at mid-block and terminating at 60' on the west side of Fenton Street is a solution that is more in keeping with goals and vision of the CBD Sector Plan for the Fenton Village Overlay Zone. Given the increase for maximum building height on the west side of Georgia Avenue in the Ripley District, raising the height limit along the east side of Georgia to 143' is probably appropriate; however, it should be done with a requirement for street activating uses (see attachment).

Conclusion

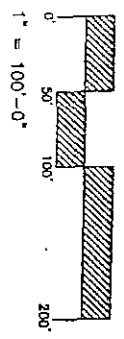
The proposed Zoning Text Amendment is contrary to the recommendations in the approved and adopted Sector Plan and the height limits in the Fenton Village Overlay Zone. Further consideration of the development envelope in Fenton Village may be appropriate. This could be done through a sector plan amendment if added to the work program by the County Council. In the meantime, planning via zoning text amendment should be discouraged.

cc: Bill Barron, Acting Team Leader, Silver Spring Team
Robert Kronenberg, Supervisor, Development Review Division

Attachment



OPTIONAL METHOD MAXIMUM HEIGHTS



Ordinance No.:
Zoning Text Amendment No.: 08-10
Concerning: Fenton Village Overlay Zone –
Hotel Height
Draft No. & Date: 2- 7/25/08
Introduced: March 6, 2008
Public Hearing: June 17, 2008
Adopted:
Effective:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Ervin and Elrich

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow additional building height to accommodate hotels in mixed-use optional method of development projects in the Fenton Village Overlay Zone; and
- generally amend allowable building heights in the Fenton Village Overlay Zone.

By amending the following sections of the Montgomery County Zoning Ordinance:

Division 59-C-18 **OVERLAY ZONES**
Section 59-C-18.192 Fenton Village Overlay Zone - Regulations

EXPLANATION:	<p>Boldface indicates a heading or a defined term.</p> <p><u>Underlining</u> indicates text that is added to existing laws by the original text amendment.</p> <p>[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.</p> <p><u>Double underlining</u> indicates text that is added to the text amendment by amendment.</p> <p>[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.</p> <p>* * * indicates existing law unaffected by the text amendment.</p>
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Ordinance

The County Council for Montgomery County, Maryland sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Section 1. Division 59-C-18 is amended as follows:

59-C-18. OVERLAY ZONES.

* * *

59-C-18.19. Fenton Village Overlay Zone.

* * *

59-C-18.192. Regulations.

* * *

(1) Building height in the Overlay Zone:

(A) along ~~[[the east side of Georgia Avenue]]~~ a major highway must not exceed 90 feet;

(B) along the [[west side of Fenton Street]] a street that confronts a block that includes properties zoned in a one-family classification must not exceed 60 feet;

(C) within the area between [[Georgia Avenue and Fenton Street]] a major highway and a street that confronts a block that includes properties zoned in a one-family classification must not exceed 60 feet but may increase up to 90 feet ~~[[for projects that are]]~~ if the floor area of the project is at least 33% residential and where the additional height is placed closest to [[Georgia Avenue]] a major highway and decreases as you move [[east to Fenton Street]] toward the closest one-family zoned property; and

~~[[B)]]~~ (E) along [[the east side of Fenton Street]] a street on a block that includes one-family residentially zoned property must not exceed 45 feet for all uses, except [housing, which must not exceed 60 feet] the building height must not exceed 60 feet for:

(i) any residential use; or

(ii) any mixed use optional method of development project, if at least 33% of the project's floor area is residential and the projects that includes a hotel. [[notwithstanding any building height limits recommended in the sector plan.]]

(F) The building heights in project plans may be approved under the standards of this subsection without regard to the building height recommendations of the sector plan.

(G) Any project plan approved before {effective date} may be constructed under the conditions of its approval and any site plan thereafter. Any site plan approved before the {effective date } may be constructed under the conditions of its approval. Any building constructed under this subsection is conforming and may be maintained and reconstructed under the conditions of their approval.

* * *

Sec. 2. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

June 6, 2008

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 08-10

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 08-10 at its regular meeting on June 5, 2008. By a vote of 2:1, the Board recommends approval of the text amendment as modified and included as a separate attachment to the technical staff report.

The text amendment proposes to amend the Zoning Ordinance to allow additional building height to accommodate hotels in mixed-use optional method of development projects in the Fenton Village Overlay Zone.

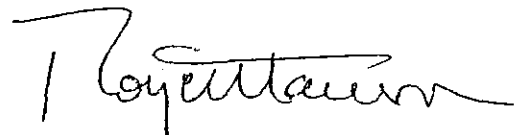
The Sector Plan limits building height for new construction fronting on the east side of Fenton street in Fenton Village to 45' for all uses except housing, which is allowed heights up to 60'. Although a 60' height does not violate the massing envelope for Fenton Village, this height on the east side of Fenton was provided only as an incentive for housing. ZTA 08-10 would permit increased building height above the overlay zone limit of 45', up to 60', to accommodate a hotel use as part of a mixed-use optional method project.

At the Planning Board public hearing, it was made apparent that the text amendment was intended to permit a 60-foot height limit on a hotel use only if it was part of a mixed-use project that also contained housing. The majority of the Board

believes that by amending the text amendment to reflect this clarification, the intent of the Sector Plan will be achieved. The dissenting opinion by the Chairman was that the text amendment continued to be inconsistent with the Sector Plan building height recommendations for the east side of Fenton Street in the Fenton Village Overlay zone.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on a motion by Vice-Chairman Robinson, seconded by Commissioner Cryor, with Commissioner Cryor, and Vice-Chairman Robinson voting in favor of the motion, and with Chairman Hanson in opposition, and with Commissioner Bryant being absent from the meeting, at its regular meeting held in Silver Spring, Maryland, on Thursday, June 5, 2008.

A handwritten signature in black ink, appearing to read "Royce Hanson", written in a cursive style.

Royce Hanson
Chairman

RH: GR



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #8
6/05/08

DATE: May 27, 2008
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review *RK*
Ralph Wilson, Zoning Supervisor *RDW*
FROM: Greg Russ, Zoning Coordinator *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To amend the Zoning Ordinance to allow additional building height to accommodate hotels in mixed-use optional method of development projects in the Fenton Village Overlay Zone.

TEXT AMENDMENT: No. 08-10
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmembers Ervin and Elrich
INTRODUCED DATE: May 6, 2008

PLANNING BOARD REVIEW: June 5, 2008
PUBLIC HEARING: June 17, 2008; 1:30pm

STAFF RECOMMENDATION: DENIAL

Staff recommends denial of the proposed Zoning Text Amendment (ZTA) for the following reason:

- Inconsistent with the Sector Plan building height recommendations for the east side of Fenton Street in Fenton Village

The Sector Plan limits building height for new construction fronting on the east side of Fenton street in Fenton Village to 45' for all uses except housing, which is allowed heights up to 60'. Although a 60' height does not violate the massing envelope for Fenton Village, this height on the east side of Fenton was provided only as an incentive for *housing*. *ZTA 08-08 would permit increased building height above the overlay zone limit of 45', up to 60', to accommodate a hotel use as part of a mixed-use optional method project. In staff's view, a hotel would not meet the Fenton Village housing objectives and does not qualify for an increase in building height under sector plan provisions.*

ZTA 08-10 also substitutes the overlay zone use of the word "housing" with the word "residential". This change creates unnecessary ambiguity and is not

supported by staff. ZTA 08-10 contains language on lines 21-23 to discount the sector plan conformity issue. Staff is not convinced that the proposed language is an effective or appropriate mechanism to amend a sector plan. .

ANALYSIS

Zoning Text Amendment 08-10 (Attachment 1) proposes a revision to Section 59-C-18.19 (Fenton Village Overlay Zone) that would allow up to 60' in height along the east side of Fenton Street for: 1) a residential use; or 2) an optional method mixed-use development that includes a hotel. Currently, the maximum height along the east side of Fenton Street is limited to 45', except a housing project may be increased to 60'.

The Sector Plan envisioned Fenton Village as a transitional area between the core and the surrounding neighborhoods. To fulfill that goal, it recommended building heights that step down from Georgia Avenue to the edge of the CBD. A 60' maximum height was recommended on the east side of Fenton Street specifically to encourage housing; otherwise, the maximum building height on the east side of Fenton Street was limited 45'. Allowing 60' tall buildings on both sides of Fenton Street would help to maintain a uniform and consistent street wall on both sides of Fenton Street. However, allowing buildings without housing to be more than 45' tall on the east side would violate the intent of the Sector Plan (see sketch attached to Community-Based Planning Memorandum-Attachment 2).

Another issue to be considered is the basic rule that a subdivision must substantially conform to the master plan unless the Board finds that the master plan is no longer applicable still would apply to a subdivision submitted in Fenton Village. Sector plan and subdivision provisions cannot be changed by amendment of the zoning code. Notwithstanding any approval of ZTA 08-10 by the District Council, the sector plan recommended building height for the affected Fenton Village properties would still be 45' for all uses except housing, and a finding that the sector plan recommendation is no longer applicable would be required to approve a preliminary plan. It should be further noted that any optional method of development project plan must conform to the applicable sector plan.

Conformance with the Applicable Sector Plans

The Approved and Adopted Silver Spring CBD Sector Plan recommended height limits to "ensure compatibility with adjoining neighborhoods". (Silver Spring CBD Sector Plan, 2000, pg 60). These height limits were implemented by the Fenton Village Overlay Zone. Specifically, the Overlay Zone limits heights to 90' on the east side of Georgia Avenue and to 60' feet on the west side of Fenton Street, with all properties in between not exceeding 60' except in the case of housing, in which case 90' would be allowed. *On the east side of Fenton Street heights must*

not exceed 45' for all uses, except in the case of housing, where it may go to up to 60'.

A height incentive for housing in Fenton Village was recommended in the Sector Plan because it was expected that such development would do the following: 1) enhance the mix of uses by creating new housing opportunities; 2) activate the streets; and 3) provide resident markets for businesses within the overlay zone. Because a hotel use would not provide new housing opportunities (and the associated MPDUs and Workforce Housing), a hotel use fails to provide this very important benefit. The Planning Board would have serious difficulty finding that a preliminary plan or project plan is consistent with the Sector Plan if it proposed 60' tall buildings on the east side of Fenton Street without housing.

RECOMMENDATION

Based on the above analysis, staff recommends that ZTA 08-10 not be approved. A 60' tall hotel on the east side of Fenton Street is not housing and does not fulfill the goal for which the height incentive was provided. Revisions to the Sector Plan should be accomplished through the sector plan amendment process, not through a piecemeal zoning text amendment.

GR

Attachments

1. Proposed Text Amendment No. 08-10
2. Memorandum to Greg Russ from Community-Based Planning



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

May 20, 2008

MEMORANDUM

TO: Greg Russ, Planner Coordinator
Development Review Division

VIA: Glenn Kreger, Acting Chief *GK*
Community-Based Planning Division

FROM: John Marcolin, ASLA, Planner Coordinator
Community-Based Planning Division *JM*

SUBJECT: Draft ZTA No.08-10
Fenton Village Hotel Use

RECOMMENDATION: Community-Based Planning recommends denial of this Zoning Text Amendment because the language in the Sector Plan clearly supports additional height solely for housing on the east side of Fenton Street in the Fenton Village.

- Though a 60' height does not violate massing envelope put forth by the Silver Spring Sector Plan, this height on the east side of Fenton was provided by the Sector Plan as an incentive for *Housing*.
- A hotel use is clearly not the same use as housing; it does not provide any MPDU's or workforce housing.

Sector Plan Guidance

The Approved and Adopted Silver Spring CBD Sector Plan recommended height limits to "ensure compatibility with adjoining neighborhoods." (Silver Spring CBD Sector Plan, 2000, page 60). These height limits were implemented by the Fenton Village Overlay Zone. Specifically, the Overlay Zone limits heights to 90' on the east side of Georgia Avenue and to 60' feet on the west side of Fenton Street; properties in between must not exceed 60' except in the case of housing, in which case 90' would be allowed. On the east side of Fenton Street heights must not exceed 45' for all uses, except in the case of housing, where it may go to up to 60'.

A height incentive for housing in Fenton Village was recommended in the Sector Plan because it was expected that such development would do the following: 1) enhance the mix of uses by creating new housing opportunities, 2) activate the streets, and 3) provide resident markets for businesses within the Overlay Zone. Because a hotel use would not provide new housing

opportunities (and the associated MPDUs and Work Force Housing), a hotel use fails to provide this very important benefit. The Planning Board would have serious difficulty finding that a preliminary plan or project plan is consistent with the Sector Plan if it proposed 60' tall buildings on the east side of Fenton Street without housing.

Urban Design

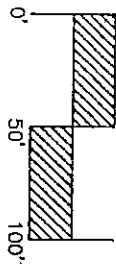
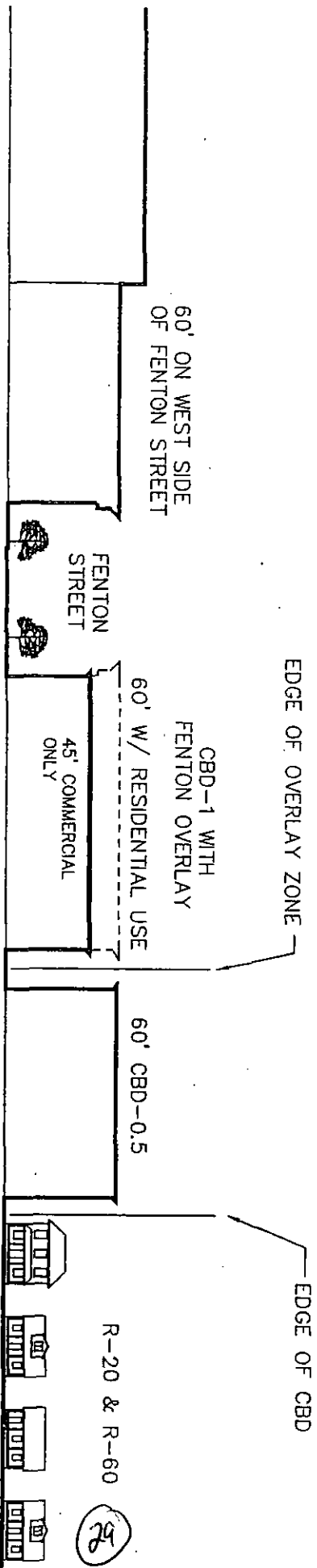
The Sector Plan envisioned Fenton Village as a transitional area between the core and the surrounding neighborhoods. To fulfill that goal, it recommended building heights that step down from Georgia Avenue to the edge of the CBD. A 60' maximum height was recommended on the east side of Fenton Street specifically to encourage housing; otherwise, the maximum building height on the east side of Fenton Street was limited to 45'. Allowing 60' tall buildings on both sides of Fenton Street would help to maintain a uniform and consistent street wall on both sides of Fenton Street. However, allowing buildings more than 45' tall on the east side without housing would violate the intent of the Sector Plan.

Conclusion

A 60' tall hotel on the east side of Fenton Street is not housing and does not fulfill the goal for which the height incentive was provided. Revisions to the Sector Plan vision should be accomplished through the sector plan amendment process, not through piecemeal zoning text amendments.

cc: Bill Barron, Acting Team Leader, Silver Spring Team
Robert Kronenberg, Supervisor, Development Review Division
Elza Hisel-McCoy, Senior Planner, Development Review Division

Attachment



2000 ZONING

OPTIONAL METHOD MAXIMUM HEIGHTS IN FENTON VILLAGE OVERLAY ZONE

MEMORANDUM

June 24, 2008

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Legislative Attorney

SUBJECT: Zoning Text Amendment 08-08,
Fenton Village Overlay Zone - Workforce Housing Height

Zoning Text Amendment (ZTA) 08-08, sponsored by the District Council at the request of the County Executive, was introduced on April 29, 2008. Currently, Central Business District (CBD) zones allow building height limits recommended by the applicable sector plan to be exceeded to accommodate workforce housing. The Fenton Village Overlay zone was adopted on top of CBD zones. The Overlay Zone does not have a provision to exceed the sector plan-recommended height limits. ZTA 08-08 would allow additional building height, up to the height limits of the underlying zone, for workforce housing in the Fenton Village Overlay Zone.

The Council held a public hearing on the ZTA on June 17, 2008. The Greater Silver Spring Chamber of Commerce supported ZTA 08-08. A developer testified in support of ZTA 08-08, claiming that the requirements of the Overlay Zone and the CBD zoning do not allow for the market rate units, given the combination of public use space and height limits. He provided text to limit the allowable building height. Civic associations opposed the ZTA. In the view of some residents, the integrity of the Sector Plan is more important than requiring housing at a price point that is already provided by the market.

Planning Staff recommended not approving ZTA 08-08 because it allows building heights that are inconsistent with the adopted Sector Plan. Even if ZTA 08-08 is approved, Planning Staff implied that any development under the ZTA would not be able to be approved as a subdivision by the Planning Board because the subdivision ordinance requires conformance with the Sector Plan.¹ The Planning Board also recommended not approving ZTA 08-08. A Sector Plan Amendment was recommended to consider the issue of additional height in the Fenton Village area.

¹ Memorandum to Planning Board, May 22, 2008.

Staff Comments

What is the legal status of a master plan or sector plan and how can that status be changed?

Master plans and sector plans (hereafter, the phrase “sector plans” is used to mean master plans and sector plans) are advisory in nature and have no force of law absent statutes or local ordinances linking planning and zoning. Where the County Code requires conformance to sector plans in the zoning and subdivision processes, the status of comprehensive plans is elevated to the level of a true regulatory device.²

What is the current status of sector plans in the County Code?

The Zoning Ordinance requires optional method of development project plans to conform to sector plans.³ Applications for several floating zones must conform to the recommendations of a sector plan.⁴ The Subdivision Regulations of the County Code include the following provision:

Relation to Master Plan. In determining the acceptability of a preliminary plan submitted under this Chapter, the Planning Board must consider the applicable master plan, sector plan, or urban renewal plan. A preliminary plan must substantially conform to the applicable master plan, sector plan, or urban renewal plan, including maps and text, unless the Planning Board finds that events have occurred to render the relevant master plan, sector plan, or urban renewal plan recommendation no longer appropriate.⁵

No other provision in County law allows the Planning Board to judge whether events after the master plan's adoption made the recommendation of the plan no longer appropriate.

The Zoning Ordinance allows height and density flexibility for Moderately Priced Dwelling Units (MPDUs) in zones that require development plan approval and project plan approval.⁶ The TS-R, TS-M, MXP, and PD zones all require the approval of a development plan.

Under the Subdivision Regulations, MPDUs may be exceptions to the requirement that development must conform to height and density recommendations of a sector plan.⁷ The

² *David Trail v. Terrapin Run, LLC*, 400 Md 523 (2008). See Appendix for more detail on this conclusion.

³ §59-D-2.42 (b).

⁴ TS-M, TS-R, and MXP for example.

⁵ §50-35 (l).

⁶ §59-D-1.61; §59-D-2.42(b).

⁷ §50-35. Preliminary subdivision plans-Approval procedure...

(l)... to permit the construction of all MPDUs required under Chapter 25A, including any bonus density units, on-site, a preliminary plan may exceed, in proportion to the MPDUs to be built on site, including any bonus density units, any applicable residential density or building height limit established in a master plan or sector plan if a majority of an Alternative Review Committee

Subdivision Regulations are silent on whether development with workforce housing may similarly exceed the sector plan's recommendations.

How is workforce housing treated in the current County Code?

The Zoning Ordinance allows workforce housing to be constructed higher than the limits recommended by an adopted sector plan.⁸ Such housing may also exceed the density recommended by an adopted sector plan under the Zoning Ordinance.⁹ It can be argued that ZTA 08-08 does nothing more than allow the flexibility that exists in CBD zones to apply to the Fenton Village Overlay Zone.

There are no special provisions for workforce housing to waive the finding that a development plan "substantially complies with the use and density indicated" in the approved sector plan. There are also no specific provisions in the project plan section of the Ordinance to waive the finding that the application conforms to the applicable sector plan.

What does it mean to "conform" to applicable sector plan?

The Court of Appeals has found that the conformance with a sector plan means to be "in harmony with" the plan; it does not mean strict compliance unless there is a clear intent that the legislature intended that result.¹⁰ Although the Court focused on a particular state statute not applicable to the County and that statute's legislative history, the court will look for the Council's intent when it requires conformance, substantial conformance, or consistency with the sector plans in the Zoning Ordinance.

What is the effect of the phrase "notwithstanding" any height limits in the sector plan?

The intent of the phrase is meant to overcome the requirement that a project plan must be in conformance with Silver Spring CBD Sector Plan's height recommendations. Planning Staff seems confused because the ZTA does not specifically amend the project plan finding. Planning Staff suggests that if ZTA 08-08 is approved, a project plan that includes buildings with

composed of the Director of the Department of Housing and Community Affairs, the Executive Director of the Housing Opportunities Commission, and the Director of Park and Planning, or their respective designees, find that a development that includes all required MPDUs on site, including any bonus density units, would not be financially feasible within the constraints of any applicable density or height limit.

⁸ §59-A-6.18.2 (c) (3) "To allow the construction of all workforce housing units on site, the Planning Board must permit:...any building height limit established in a master or sector plan to be exceeded to the extent required for the number of workforce housing units that are constructed, but not to more than the maximum height of the zone."

⁹ §59-A-6.18.2 (c)(1) "To allow the construction of all workforce housing units on site, the Planning Board must permit:... any residential density or residential FAR limit of the applicable zone to be exceeded to the extent required for the number of workforce housing units that are constructed, but not by more than 10 percent..."

§59-A-6.18.2 (c) (2) "...any residential density or residential FAR limit established in a master or sector plan to be exceeded to the extent required for the number of workforce housing units that are constructed, but not to more than the maximum density and FAR of the zone...."

¹⁰ *David Trail v. Terrapin Run, LLC*, 400 Md 523 (2008).

workforce housing over the sector plan-recommended height limit could not be approved. The Council could amend the project plan findings on sector plan conformance; however, the purpose of ZTA 08-08 is to allow the Planning Board to approve a project plan with buildings higher than the sector plan's recommendation for workforce housing without making such an amendment.

Could the Planning Board deny a subdivision with workforce housing that is not in conformance with a master plan when the Zoning Ordinance allows height and density to exceed the recommendations of a master plan?

The ZTA that allowed workforce housing to exceed master plan limits was adopted after every comprehensive plan except Shady Grove and Woodmont Triangle. The Council allowed flexibility above the sector plan limits for workforce housing but it did not specifically amend the Subdivision Regulations.¹¹ If the Planning Board finds that the adoption of workforce housing provisions by the Council was **not** an event that made those aspects of the relevant sector plan no longer appropriate, then the Planning Board could deny the subdivision. In discussing ZTA 08-08 with the Planning Board, Chairman Hanson raised this possibility.

Staff has a simple world view: 1) the Zoning Ordinance grants regulatory power to master plans; 2) the Zoning Ordinance can limit or eliminate the regulatory authority of master plans; 3) the Council makes the rules; 4) every rule made by the Council is an event that may render the sector plan recommendations no longer appropriate.

When the Council clearly intends to give developments the flexibility to exceed sector plan limits it is an event that trumps older master plans. It is an issue worth discussing at the Committee's worksession if the Planning Board has a different view. The Committee may wish to determine if an amendment to the Subdivision Regulation is appropriate. In the alternative, if the Council believes that the Zoning Ordinance should never allow the recommendations of a sector plan to be exceeded, the Council may wish to review the flexibility from sector plans recommendation allowed for workforce housing and MPDUs.

How much flexibility is currently given for housing in the overlay zone?

Housing is a preferred use in the Fenton Village Overlay zone and in the underlying CBD zone. The Overlay Zone allows increased building height for projects if at least 33 percent of the project's floor area is devoted to housing.¹² The CBD zones allow increased density for housing projects.¹³ Mixed-use optional method of development projects are permitted a higher floor area ratio than all commercial projects; housing projects without any other uses are only limited by the number of dwelling units per acre without any limit on floor area.

¹¹ Although the intent of the Council to allow development to exceed the height and density limits of the master or sector plan is clear, the issues concerning the subdivision regulations were never raised in the record.

¹² §59-C-18.19(b)(1)(A).

¹³ §59-C-6.234

Why allow flexibility for housing projects?

The flexibility from non-residential density standards for residential projects is related to building economics. In healthy markets, the profit margin for non-residential uses is higher than that for residential uses. The bonuses for housing projects are an attempt to level the economic playing field.

The allowance for increased housing density recognizes that housing has less impact on roadways than the same amount of non-residential development. Housing produces fewer peak hour car trips. In addition, the housing trips from Central Business Districts are more likely to go in the non-peak direction than the trips from commercial uses.

A Central Business District without residents living in the district is void of activity after business hours. Residents produce evening and weekend activity that is desired in Central Business Districts. The residents provide eyes on the street for their own amusement and the safety of others.

The footprint required for a residential building is more restrictive than that required for a non-residential building. Bathrooms, closets, and kitchens are generally the only interior areas without windows in a high-rise dwelling unit; offices can use significant areas without windows. The need for a window in every room tends to make residential buildings narrower than office buildings. A narrower building using the same total floor area as a building with a broader footprint will be taller. In some instances, the additional floor area allowed for residential projects could only be achieved with taller buildings.

How much flexibility from the sector plan would be allowed for workforce housing under ZTA 08-08?

ZTA 08-08 allows the minimum necessary increase in height and density above the sector plan's recommendation for the production of workforce housing. The numeric limit in height and density would be the maximum of the underlying zone. Under ZTA 08-08 it would be possible to build a 143 foot high building in an area that is currently recommended for a 90 foot height limit.

What actions could accomplish the objectives of ZTA 08-08?

Amend the Sector Plan

Rather than ignoring height limits recommended in a sector plan by a ZTA, the sector plan can be amended. The Planning Board recommended such an amendment to address the issues in the Ripley Village area. An amendment to the sector plan may allow increased building height toward the Georgia Avenue edge of the area. The Council would need to amend the Board's work program to accomplish this goal.

Amend the parking standards

Although structured parking is not counted against the allowable floor area of a project, almost all structured parking is built above grade. The need to provide parking increases the building heights. Parking above grade can either be under the building or in a separate structure that reduces the footprint available for a building. Either of those alternatives requires greater building height to achieve the same density.

There is some thought that the current parking standards are excessive. More people are taking transit. The availability of cars rented by the hour has reduced the need for cars in Central Business Districts. The Planning Board has been tasked with examining parking standards. That task should lead to appropriate changes to the Zoning Ordinance's parking standards.

Amend the payment formula to the Parking District

The existence of the Parking District allows a developer to make tax payments instead of providing on-site parking. The financial incentives, however, lead most developers to provide all their parking on-site. A project that provides less than the code-required parking pays the parking district the same amount as if it did not provide any parking. Some more proportionality to payments would allow more options for developers.

Should ZTA 08-08 be approved?

The merits of ZTA 08-08 involve weighing the values of three things: 1) keeping faith with the sector plan; 2) encouraging workforce housing; and 3) sunlight and views unimpeded by tall buildings. There are a number of precedents for exceeding sector plan recommendations for providing housing at lower prices. In fact, the flexibility sought by the ZTA already exists in all CDB zones except those covered by an overlay zone. As a general matter, the Council would have to amend the flexibility provided for both MPDUs and workforce housing to make sector plans effective in all situations.

Staff places a high value on sector plan guidance. The height restrictions in the Fenton Village Overlay Zone are intended to be respectful of the nearby residential community. That value weighting leads to the recommendation to not approve ZTA 08-08 as introduced.

Should ZTA 08-10 be approved with amendments?

The Fenton Village Overlay Zone regulates height by street name. Its intent is allow the tallest buildings along a busy state highway (Georgia Avenue) and lowest buildings on properties abutting single family houses (east of Fenton Street). Staff recommends stating the zone's standards in generic terms instead of using street names.

APPENDIX

What is the regular legal status of a master plan or sector plan?

The appellate courts of this State have repeatedly noted that, generally, master plans are advisory guides only, and not normally mandatory insofar as rezonings, special exceptions, and subdivisions are concerned.¹⁴

... Nor is there any requirement, absent a statute, that the map amendment must adhere to the recommendations of the General or Master Plan. Such land use planning documents represent only a basic scheme generally outlining planning and zoning objectives in an extensive area, and are in no sense a final plan; they are continually subject to modification in the light of actual land use development and serve as a guide rather than a strait jacket.¹⁵

Can the status of a master plan or sector plan be changed?

When confronted with the question of whether subdivisions had to conform, the Court of Appeals sited the generally permissive nature of laws that could be adopted under the state enabling legislation:

Section 7-116 grants to the Commission and the governing bodies of Montgomery and Prince George's Counties the power to "prepare regulations and amendments governing the subdivision of land within the regional district or the respective portions of the regional district within Montgomery or Prince George's County."¹⁶

Prince George's County had such a regulation in their subdivision ordinance.¹⁷ The Court allowed master plans to be boot-strapped from mere guidance to a mandated requirement by the passage of the local law:

Here we have a regulation duly enacted by the legislative body for Prince George's County which specifies that the planning board shall not approve a subdivision plat not in compliance with the master plan. This subdivision regulation is as much entitled to obedience as any other legislative enactment.¹⁸

¹⁴ David Trail v. Terrapin Run, 400 Md 523 (2008).

¹⁵ Montgomery County v. Woodward & Lothrop, 280 Md. 686, 704, (1977)

¹⁶ Coffey v. Maryland-National Capital Park & Planning Com., 293 Md. 24 ;

§ 7-116. Subdivision regulations generally, "...The regulations may provide for (1) the harmonious development of the district".

¹⁷ Prince George's County Code § 24-103 (a) (1) required subdivision plats to conform to the master plan.

¹⁸ Op. cit., Coffee V. M-NCPPC

As recently as March of 2008, the Court of Appeals reaffirmed its conclusion of law on the status of master plans in a footnote:

We recognize the assertion in the Court of Special Appeals' opinion in *Richmarr Holly Hills, Inc. v. American PCS, L.P.*, 117 Md. App. 607, 655, 701 A.2d 879, 902-03 (1997), that if the legislative body desires to create mandates of compliance it has the power to do so (so long as constitutional protections are not violated). We agree. That Court, as dicta, went on to suggest some examples of types of language that might achieve such a result. Again we agree that the use of language such as "conform" might be a part of the creation of mandates so long as other language clearly indicating intent on the part of the Legislature to establish mandates rather than guides surrounds it. The Court of Special Appeals left the actual resolution of such issues to future cases... We also acknowledge our statement in *Mayor and Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 530, 814 A.2d 469, 478 (2002) (citing *Richmarr*, 117 Md. App. at 63 5-51, 701 A.2d at 89 3-901, that: "We repeatedly have noted that plans, which are the result of work done by planning commissions and adopted by ultimate zoning bodies, are advisory in nature and have no force of law absent statutes or local ordinances linking planning and zoning. Where the latter exist, however, they serve to elevate the status of comprehensive plans to the level of true regulatory device."¹⁹

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¹⁹ *David Trail v. Terrapin Run, LLC*, 400 Md 523 (2008)


ADDENDUM
AGENDA ITEMS #12 & 13
July 29, 2008

Action

MEMORANDUM

July 28, 2008

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: Action - Zoning Text Amendment 08-08,
Fenton Village Overlay Zone - Workforce Housing Height
and
Zoning Text Amendment 08-10,
Fenton Village Overlay Zone - Hotel Heights

PHED Committee Recommendation: The Planning, Housing, and Economic Development Committee held worksessions on June 26, 2008 and July 28, 2008. After careful review of the materials of record, the Committee recommended that ZTA 08-08 be approved with the following amendments:

- 1) Allow a maximum height of 90 feet **along** Georgia Avenue;
- 2) Allow 110 foot building height **near** Georgia Avenue to accommodate workforce housing;
- 3) Require building heights to taper down at the Planning Board's discretion, from the highest buildings near Georgia Avenue to the maximum 60 foot heights allowed along Fenton Street;
- 4) East of Fenton Street, allow mixed-use optional method of development projects that include both residential and hotel uses with a maximum building height of 60 feet;
- 5) Allow additional building height only if least 33 percent of the **floor area** of a project will be for housing;
- 6) Grandfather project plans and site plans approved before the ZTA's effective date (August 18, 2008); and
- 7) Replace the street names in the Overlay zone with generic descriptions that reflect the rationale for different building heights:
 - a) Georgia Avenue = major highway,
 - b) East side of Fenton Street = a street abutting a block that includes one-

family zoning,
c) West side of Fenton Street = a street confronting a block that includes
one-family zoning.

The Committee believed that these amendments would allow a modest amount of building height flexibility to accommodate workforce housing. It would also allow a hotel in a residential project the same building height allowed for an all-residential project on blocks that include one-family zoned property (on the east side of Fenton Street).

The Committee recommended the adoption of "Alternative #2" in the June 25, 2008 staff memorandum to the Council with 2 minor clarifications: 1) the additional building height would be allowed to accommodate any workforce housing units; and 2) site plans from previously approved project plans would be grandfathered. The Committee's recommendation would not require any Council action on ZTA 08-10.

Ordinance No.:
Zoning Text Amendment No.: 08-08
Concerning: Fenton Village Overlay Zone –
Workforce Housing Height
Draft No. & Date: 4 - 7/28/08
Introduced: April 29, 2008
Public Hearing: June 10, 2008
Adopted:
Effective:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: The District Council at the request of the County Executive

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow additional building height for mixed-use, optional method of development projects with a hotel in the Fenton Village Overlay Zone;
- allow optional method of development projects in the Fenton Village Overlay Zone additional building height to accommodate workforce housing units; and
- generally amend building height limits in the Fenton Village Overlay Zone.

By amending the following sections of the Montgomery County Zoning Ordinance:

Division 59-C-18 OVERLAY ZONES
Section 59-C-18.192 Fenton Village Overlay Zone - Regulations

<p>EXPLANATION: Boldface indicates a heading or a defined term. <u>Underlining</u> indicates text that is added to existing laws by the original text amendment. [Single boldface brackets] indicate text that is deleted from existing law by the original text amendment. <u>Double underlining</u> indicates text that is added to the text amendment by amendment. [[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment. * * * indicates existing law unaffected by the text amendment.</p>
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OPINION

Zoning Text Amendment (ZTA) 08-08, sponsored by the District Council at the request of the County Executive, was introduced on April 29, 2008. Currently, Central Business District (CBD) zones allow building height limits recommended by the applicable sector plan to be exceeded to accommodate workforce housing. The Fenton Village Overlay zone was adopted on top of CBD zones. The Overlay Zone does not have a provision to exceed the sector plan-recommended height limits. ZTA 08-08, as introduced, would allow additional building height, up to the height limits of the underlying zone, for workforce housing in the Fenton Village Overlay Zone.

Zoning Text Amendment (ZTA) 08-10, sponsored by Councilmembers Ervin and Elrich, was introduced on May 6, 2008. ZTA 08-10 would amend the Zoning Ordinance to allow additional building height to accommodate a hotel in a mixed-use optional method of development project on the east side of Fenton Street in the Fenton Village Overlay Zone. Currently, the Fenton Village Overlay Zone limits building heights on the east side of Fenton Street to 45 feet except for multi-family buildings, which may be 60 feet tall. ZTA 08-10 would allow a maximum building height of 60 feet for a mixed-use optional method of development project that includes a hotel on the east side of Fenton Street.

Planning Staff recommended not approving ZTA 08-08 because it allows building heights that are inconsistent with the adopted Sector Plan. The Planning Board also recommended not approving ZTA 08-08. A Sector Plan Amendment was recommended to consider the issue of additional height in the Fenton Village area.

The Planning Staff, consistent with its recommendations on ZTA 08-08, recommended against approving ZTA 08-10. The core principle for the Planning Staff is the ZTA's disregard for the recommendations of the sector plan. The Planning Board recommended the adoption of ZTA 08-10. The Planning Board was swayed by the community's support and not dissuaded by the Planning Staff reasoning.

The Council held a public hearing on ZTA 08-08 and 08-10 on June 17, 2008. The Greater Silver Spring Chamber of Commerce supported ZTA 08-08. A developer testified in support of ZTA 08-08, claiming that the requirements of the Overlay Zone and the CBD zoning do not allow for the market rate units, given the combination of public use space and height limits. He provided text to limit the allowable building height. Civic associations opposed the ZTA. In the view of some residents, the integrity of the Sector Plan is more important than requiring housing at a price point that is already provided by the market.

Civic organizations supported ZTA 08-10. Testimony noted that a hotel was much like multi-family projects; its occupants would support local businesses at times when office workers are absent. The fact that the height for any hotel would be limited to the maximum height currently recommended by the Silver Spring CBD Sector Plan for the area was also noted.

The Planning, Housing, and Economic Development Committee held worksessions on June 26, 2008 and July 28, 2008. After careful review of the materials of record, the Committee recommended that ZTA 08-08 be approved with the following amendments:

- 1) Allow a maximum height of 90 feet **along** Georgia Avenue;
- 2) Allow 110 foot building height **near** Georgia Avenue to accommodate workforce housing;
- 3) Require building heights to taper down at the Planning Board's discretion, from the highest buildings near Georgia Avenue to the maximum 60 foot heights allowed along Fenton Street;
- 4) East of Fenton Street, allow mixed-use optional method of development projects that include both residential and hotel uses with a maximum building height of 60 feet;
- 5) Allow additional building height only if least 33 percent of the **floor area** of a project will be for housing;
- 6) Grandfather project plans and site plans approved before the ZTA's effective date (August 18, 2008); and
- 7) Replace the street names in the Overlay zone with generic descriptions that reflect the rationale for different building heights:
 - Georgia Avenue = major highway
 - East side of Fenton Street = a street abutting a block that includes one-family zoning
 - West side of Fenton Street = a street confronting a block that includes one-family zoning.

The Committee believed that these amendments would allow a modest amount of building height flexibility to accommodate workforce housing. It would also allow a hotel in a residential project the same height allowed for an all-residential project on blocks that include one-family zoned property. The recommendations of the Committee would not require any action by the Council on ZTA 08-10.

The District Council reviewed Zoning Text Amendment No. 08-08 at a worksession held on July 29, 2008. The Council agreed with the Committee recommendation to approve ZTA 08-08 as amended.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 08-08 will be approved as amended.

Ordinance

The County Council for Montgomery County, Maryland sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Section 1. Division 59-C-18 is amended as follows:

59-C-18. OVERLAY ZONES.

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59-C-18.19. Fenton Village Overlay Zone.

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59-C-18.192. Regulations.

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(1) Building height in the Overlay Zone:

(A) along [[the east side of Georgia Avenue]] a major highway must not exceed 90 feet;

(B) along [[the west side of Fenton Street]] any street confronting any block that includes property zoned in any one-family residential classification, must not exceed 60 feet;

(C) within the area between [[Georgia Avenue and Fenton Street]] a major highway and a street that confronts a block that includes property zoned in any one-family residential classification, must not exceed 60 feet but may increase up to 90 feet the maximum height allowed [[for projects that are]] if at least 33% of a project's floor area is residential; however, if additional building height is necessary to allow to accommodate workforce housing units and at least 33% of the project's floor area is residential, up to 110 feet and where the additional height is placed [[closest to Georgia Avenue]] near a major highway and decreases [[as you move east to Fenton Street]] in the direction of the closest property zoned in any one-family residential classification; [and]

28 ~~[(B)]~~ (D) [[along the east side of Fenton Street]] property located in a
29 block that includes property zoned in any one-family residential
30 classification must not exceed 45 feet for all uses except [[housing,
31 which must not exceed 60 feet[.]; and]] the building height must not
32 exceed 60 feet for:

33 (i) residential use: or

34 (ii) mixed use optional method project, if at least 33% of the
35 project's floor area is residential and the project includes a
36 hotel.

37 (E) Building heights may be approved under the standards of this
38 subsection without regard to the building height recommendations of
39 the sector plan.

40 (F) Any project plan approved before August 18, 2008 may be
41 constructed under the conditions of its approval and any site plan
42 thereafter that implements the previously approved project plan. Any
43 site plan approved before the August 18, 2008 may be constructed
44 under the conditions of its approval. Any building constructed under
45 this subsection is conforming and may be maintained and
46 reconstructed under the conditions of their approval.

47 ~~[(C)]~~ between Georgia Avenue and Fenton Street, any optional method of
48 development project may be approved up to the maximum height limit
49 in the underlying zone for the construction of workforce housing units
50 as defined in Chapter 25B if the additional height is the minimum
51 necessary to allow for the construction of workforce housing units.
52 The additional building height for workforce housing units may be
53 approved notwithstanding any limits recommended in a sector plan;

54 however, the building height along the west side of Fenton Street
55 must not exceed 60 feet.]]

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57 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
58 date of Council adoption.

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61 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council

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